

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. RICKY BAGBY

Direct Appeal from the Circuit Court for Lincoln County
No. S0700057 Robert Crigler, Judge

No. M2007-02516-CCA-R3-CD - Filed April 24, 2008

The Defendant, Ricky Bagby, appeals the trial court's denial of his motion to reduce his sentence pursuant to Rule 35 of the Tennessee Rules of Criminal Procedure. The State has filed a motion requesting that this Court affirm the trial court's judgment pursuant to Rule 20, Rules of the Court of Criminal Appeals. After a review of the record, we conclude that the State's motion should be granted. The Defendant has failed to present an adequate record for review. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rule of the Court of Criminal Appeals

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Ricky Bagby, Whiteville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Renee W. Turner, Assistant Attorney General; Charles Crawford, District Attorney General, for the Appellee, State of Tennessee.

OPINION

The Lincoln County Grand Jury indicted the Defendant on two counts of especially aggravated kidnapping and one count of attempted first degree murder, for crimes he committed against his wife, Andrea Bagby. The Defendant pled guilty to one count of attempted first degree murder and received an agreed sentence of twenty years in prison. In accordance with the plea agreement, the two counts of especially aggravated kidnapping were dismissed.

The Defendant subsequently filed a motion to reduce his sentence pursuant to Tennessee Rule of Criminal Procedure 35. The trial court held a hearing, after which it denied the motion. The Defendant appealed, contending that his sentence should be modified in light of *Blakely v. Washington*, 124 S. Ct. 2531 (2004). The Defendant has failed to attach the transcript of the guilty plea hearing, the transcript of the sentencing hearing, or the transcript of the hearing on the motion to reduce his sentence. As the State correctly argues, it is the appellant's duty to prepare an adequate record for review. Tenn. R. App. P. 24(b). In *State v. Ballard*, 855 S.W.2d 557, 560-61 (Tenn. 1993), the Supreme Court determined that "[w]here the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellant court is precluded from considering the issue." The record contains only the motion to reduce the Defendant's sentence and the presentence investigative report. It is difficult for this Court to adequately review this issue without a copy of any of the relevant transcripts.

In any event, the Court has reviewed the Rule 35 motion. A sentence may be modified under Rule 35 when the trial court finds that the original sentence must be reduced "in the interests of justice." *State v. Irick*, 861 S.W.2d 375, 376 (Tenn. Crim. App. 1993). Appellate review of Tennessee Rule of Criminal Procedure 35 rulings is governed by an abuse of discretion standard. *Id.* Based upon the record before the Court, we cannot conclude that the trial court abused its discretion in denying the motion to modify the sentence. The trial court's order denying the motion simply states that the motion was denied "for reasons stated on the record." Again, without the relevant transcripts in the record, we cannot review the trial court's reasons for denial. We cannot, therefore, find the trial court abused its discretion in this regard.

Upon due consideration of the pleadings, the record, and the applicable law, the Court concludes that the petition was properly dismissed. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance to Rule 20, Rule of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE